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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/601,878	06/24/2003	Norbert Dumler	DUMLER28	1305

1444 7590 07/12/2005

BROWDY AND NEIMARK, P.L.L.C.  
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SUITE 300  
WASHINGTON, DC 20001-5303

EXAMINER
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DOAN, ROBYN KJEU

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 07/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/601,878	<b>Applicant(s)</b> DUMLER, NORBERT	
	<b>Examiner</b> Robyn Doan	<b>Art Unit</b> 3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 April 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
    a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Applicant's Amendment filed 04/29/05 has been entered and carefully considered. Claims 1-3 have been amended. New claims 4-5 have been added. Limitations of new and amended have not been found to be patentable over prior art of record, therefore claims 1-5 are rejected under the new ground rejections as set forth below.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 3-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Thayer et al (IDS cited reference).

With regard to claims 1 and 3-4, Thayer et al discloses a mascara applicator (fig. 4) comprising a plurality of bristles (18) which are held between two intertwined wire sections (13), with the bristles passing through a helical reinforcing element which is formed by two individual flights of helix (col. 10, lines 45-48) each of the flights having a first end (54) engaged to each other at a first end of the reinforcing element and a free second end (52) at the second end of the reinforcing element wherein the free second

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ends of the two individual flights of helix being arranged in a recess (62) and wherein the first ends of the two individual flights of helix being engaged together by a rounded portion (55).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title; if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Thayer '994.

With regard to claim 5, Thayer '994 discloses a mascara brush comprising all the claimed limitations in claim 4 as discussed above except for the two flights of helix and the rounded portion being formed as a unit. It would also have been obvious to one having an ordinary skill in the art at the time the invention was made to form the two flights of helix and the rounded portion being formed as a unit, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Thayer et al in view of Kingsford (IDS cited reference).

With regard to claim 2, Thayer et al discloses a mascara applicator comprising all the claimed limitations in claim 1 as discussed above except for threads of individual flights being asymmetric such that a pitch of a first section of the thread is greater than that a second section, with a free interstice for the bristles to pass through alternately having a smaller distance and a greater distance. Kingsford discloses a mascara applicator (figs. 3-6, 9-10) comprising a plurality of bristles (19) and a helical (18a) wherein threads of helical being asymmetric such that a pitch of a first section of the thread (fig. 4) being greater than a second section, with a free interstice for the bristles to pass through alternately having a smaller distance and a greater distance (fig. 6). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the particular threads as discussed above as taught by Kingsford into the mascara applicator of Thayer et al for the purpose of providing a specific amount of mascara product depending upon the simple selection of distance between the coating surfaces.

Applicant has argued that Thayer's reference does not include certain features of Applicant's invention, the limitations on which Applicant relies i.e., "the two flights of helix start from the region of the handle with a free end until the tip of the brush where the flights are engaged together in a round turn back so that the helixes turn back to the region of the handle , so that both free ends of the wire are in the region of the handle" are not stated in the claims. It is the claims that define the claimed invention, and it is claims, not specifications that are anticipated or unpatentable. *Constant v.*

Advanced Micro-Devices Inc., 7USPQ2d 1064.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 8:30-6:00.

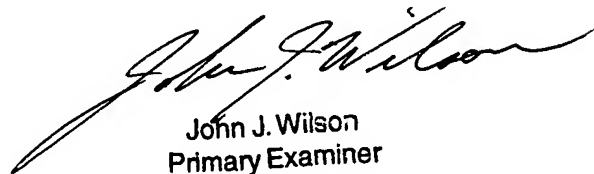
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Robyn Doan  
July 8, 2005



John J. Wilson  
Primary Examiner